



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLIFFORD F. TUTTLE, ET AL. 4:21-CV-00270

VS. HOUSTON, TEXAS

CITY OF HOUSTON, ET AL. OCTOBER 29, 2024

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ALBERT H. BENNETT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE TUTTLE PLAINTIFFS: Mr. Boyd Smith
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transcript produced via computer.

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1 we could have hearings to determine exactly what portions of
2 the testimony needs to be sealed, but it will be very difficult
3 to determine that. And I don't think that it's possible for
4 the defendants that are indicted to receive a fair criminal
10:06AM 5 proceeding if this information is released and accessible to
6 the public.

7 And by way of example, I did want -- the only
8 cases I found were either federal criminal cases that have been
9 sealed or to protect trade secrets, and those proceedings that
10:06AM 10 I found were sealed entirely.

11 THE COURT: Thank you, counselor.

12 MS. AZADEH: Thank you, Your Honor.

13 THE COURT: Anyone else from any of the defendants need
14 to be heard?

10:07AM 15 MR. HARDIN: Good morning, Your Honor. Rusty Hardin on
16 behalf of Mr. Gallegos.

17 We did not join in the motion to seal, and we
18 don't join it. From the very beginning we have wanted his
19 story and these guys that did have nothing to do with the
10:07AM 20 affidavit and were totally unaware of it, all we've wanted is a
21 public either a nonsuit in this case or his story to be out.

22 We have done it in the hopes the Court would
23 recognize qualified immunity applies to our man. That's why we
24 asked for a continuance until that decision was rendered by the
25 Court.

1 And, of course, if you rule against us, then
2 we're going to ask the Fifth Circuit for a stay. And then if
3 we're ruled beforehand, we're going to appeal, as you know, and
4 if we're not, then we're gone and we don't have an issue then.

10:08AM 5 I'll point out to the Court, you may not be
6 aware, we're the only one that waived our Fifth Amendment right
7 as long as the restriction of the deposition was not to go into
8 the issue that you're talking about now. That's our same
9 position for the trial.

10:08AM 10 We waive the Fifth Amendment that has anything to
11 do with the Harding Street case and we believe very strongly
12 not only was our guy -- is not liable, but that he's protected
13 by what he did. He's the guy that saved everybody's lives.
14 He's also the person that did the shooting. So he's the one
10:08AM 15 whose shots resulted in the deaths of the two deceased, but
16 he's also the one that did it while cloaked by qualified
17 immunity and saving four lives.

18 Having said all that, the only way they affect
19 us, they affect us tremendously, these new indictments, if the
10:08AM 20 Court decides at trial that they're going to be allowed to
21 question about that if he takes the stand. That's the way it
22 affects us.

23 Otherwise, consistent -- if the Fifth Circuit
24 somehow tells us -- again it's all up to how you rule. But if
10:09AM 25 you rule against us on qualified immunity, we go to the

1 With respect to this issue as defined by the
2 Court, the Court's responsibility is to protect the
3 Fifth Amendment rights of the defendants. The Court has been
4 very protective of that appropriately.

10:10AM 5 They've each, including Mr. Gallegos, asserted
6 that in their testimony in this case. They're certainly
7 allowed to continue to do that at trial. But the fact that
8 they may have potential criminal liability on a case
9 approaching the six-year anniversary of the deaths of these two
10 folks is not a basis for a forever delay of the trial from our
11 perspective.

12 THE COURT: Two points.

13 One, as you correctly point out, which I
14 appreciate, I have been very protective, aware, sympathetic --
10:11AM 15 however you want to characterize it -- to the Fifth Amendment
16 rights of the defendants in this civil action who may face
17 criminal prosecution.

18 There is a tension created by that if we go
19 forward with the civil trial as scheduled for a full, in my
10:11AM 20 view, for a full and complete airing of the facts necessary for
21 the jury to consider your allegations.

22 Some of the defendants who may be facing
23 indictment, criminal prosecution, are going to be faced with
24 this very issue as to testifying on matters which may impact
10:12AM 25 their criminal liability.

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